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The Community Infrastructure Levy

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Introduction

1. Delivering the right infrastructure is critical to sustainable economic development, in particular housing. The Government has invested significant extra resources in infrastructure since 1997 to help local councils unlock the land needed for new homes and jobs. But the private sector, which benefits from this infrastructure, also needs to play its part.

2. This is why the Government has introduced provisions in the Planning Bill for the new Community Infrastructure Levy (CIL) that will establish a better way to increase investment in the vital infrastructure that growing communities need. The Bill allows for regulations to empower local councils to apply a Community Infrastructure Levy on new developments in their areas to support infrastructure delivery.

3. CIL forms part of a wider package of funding for infrastructure to support housing and economic growth. CIL cannot be expected to pay for all of the infrastructure required, but it is expected to make a significant contribution.

4. Generally, when land is granted permission for development, two things happen. Firstly, the development has an impact on the local community, which needs to be mitigated if the development is to be sustainable (in the widest sense). And secondly, the value of the land may rise. The overall purpose of the CIL is to ensure that development contributes fairly to the mitigation of the impact it creates: to ensure that development is delivered, and in a more sustainable way. The fact that the value of the land (or property) typically rises as a result of development means that contributions can be required without removing incentives to develop.

5. Because CIL aims to ensure that development is delivered in a more sustainable way, the effect of the clauses in the Planning Bill is to require CIL to be spent on infrastructure to support the development of an area.

6. CIL will be a standard charge decided by designated charging authorities and levied by them on new development. For example, the CIL could be levied as a certain amount per dwelling or per square metre of development, following the example of existing 'tariff' schemes introduced by some local planning authorities.

7. The Government wants CIL funds to unlock development. But if the levy is set too high, it might cause some development to become unviable. Because it is the purpose of CIL to ensure that more development is delivered, the level of CIL must be set to ensure it supports and does not prevent development. In setting charges, charging authorities will therefore need to take account of land value uplifts in their area.

8. This document sets out the background to the CIL and more detail on the provisions in the Planning Bill. It goes on to explain how it is envisaged at this stage the CIL will operate, in particular:

- how the CIL will be set;
- how the CIL will be spent;
- the future of planning obligations;
- how, when and by whom CIL will be paid; and
- the approach to exemptions and thresholds.

9. Finally, the document explains how Government will be continuing to develop the detail of the CIL in consultation with stakeholders; and what local planning authorities should expect to do in the period up to, and beyond, the implementation of the CIL. The Government will seek views on the proposals in this document.

Background

10. Ensuring that we have sufficient new homes, for sale and for rent, is one of the Government's main priorities. Everyone deserves somewhere they can be proud to call home, at a price they can afford, in high quality places where all members of the community, and especially families, have ready access to key services and amenities.

11. Housing supply grew by over 185,000 net additional homes in 2005/2006, the highest level since the 1980s, and investment in social housing has reduced the number of households living in non-decent homes by over one million. Despite this progress, significant challenges remain. The UK's ageing and growing population and the growth in the number of households means that the supply of housing is still not keeping pace with rising demand. The recent Housing Green Paper[1] therefore set out plans to deliver three million new homes by 2020 – homes that this country desperately needs to meet growing demand and rising aspirations.

[1] *Homes for the future: more affordable, more sustainable*, CLG, July 2007

12. Alongside this new housing we need to provide the economic development to ensure we continue the growth of new jobs and investment we have achieved over the past decade. The Government's strategy for advancing productivity growth is based on macroeconomic stability to allow firms and individuals to invest in the future, and microeconomic reforms to ensure that markets function efficiently and the barriers to productivity growth are tackled. Government's discussion document *Productivity in the UK 7*[2] highlights the importance of investment in infrastructure, and sets out the empirical evidence that transport infrastructure supports productivity growth. An important component of the strategy therefore is the need to invest in the UK's infrastructure to ensure the long run success of the UK economy.

13. Government is committed to making improvements in the economic performance of all English regions, while reducing the gap in growth rates between the regions. This commitment has been reaffirmed by the publication of the Sub National Review[3] in July 2007 whose aim is to maximise prosperity in all parts of England by stimulating economic growth and improving housing supply. The Review sets out a number of structural reforms to deliver these improvements which will streamline and strengthen the regional tier, and strengthen the local tier, including a new statutory economic assessment duty.

14. Providing supporting infrastructure is vital to ensure that these new homes and jobs are sustainable. *The Eddington Transport Study*[4] and the work of the 2007 Comprehensive Spending Review into Supporting Housing Growth have both identified the central importance of transport for growth. Therefore, it is conceivable that in many areas a substantial proportion of the levy receipts will be spent on transport infrastructure.

15. However, the CIL is not just about transport and strategic infrastructure, although they are important. It is about making certain that the very things that make the quality of life good in a neighbourhood are provided – or are not lost or weakened but are maintained or improved when an existing community grows. This means adequate local facilities to serve families such as schools, parks, health centres; good public transport and provision for pedestrians and cyclists; and flood defences to protect development from the impact of climate change.

[2] *Productivity in the UK 7: Securing long term prosperity*, HM Treasury/Department for Business, Enterprise and Regulatory Reform, November 2007

[3] *Taking forward the Review of Sub-National Economic Development and Regeneration*, CLG/Department for Business, Enterprise and Regulatory Reform, December 2007

[4] *The Eddington Transport Study*, HM Treasury, December 2006.

16. The Government has already announced £1.7 billion of targeted funding for growth areas, growth points and eco-towns, including £300m for the Community Infrastructure Fund. This is on top of the mainstream Government funding for infrastructure announced in the 2007 Comprehensive Spending Review. Annual spending on education is projected to rise by over £9bn by 2010-11; spending on the NHS by over £19bn; spending on transport by nearly £2bn; and spending on local government by £2.6bn.[5] This is a substantial public sector investment aimed at ensuring the sustainability of our communities over the coming years.

Why should development pay for infrastructure?

17. The planning system has for a long time allowed councils to require developers to make payments to mitigate the impacts of new development, using a system known as planning obligations. (See Box 1)

18. Research[6] shows that local authorities tend only to negotiate planning obligations alongside consents for larger developments, partly because affordable housing requirements (which often apply to developments over a certain size) trigger a planning obligation, but also because the time and costs involved do not always make it worthwhile negotiating on smaller developments. Only around 14% of all housing planning permissions made any contribution in 2003-04, although the proportion of units with a planning obligation attached was significantly higher. This means that many medium-sized and smaller developments currently do not contribute anything at all.

19. Almost all development has some impact on the need for infrastructure, services and amenities, or benefits from it, so it is only fair that such development pays a share. It is also right that those who benefit financially when planning permission is given should share some of that gain with the community to help fund the infrastructure that is needed to make development acceptable and sustainable.

20. The Government therefore believes that it is right that development itself should make more of a contribution to the infrastructure costs faced by local communities, and that the burden of contributing to development should be spread more fairly. It also believes that developers should have more certainty as to what they will be expected to contribute, thus speeding up the planning system.

[5] *Pre-Budget Report and Comprehensive Spending Review*, HM Treasury, October 2007.

[6] *Valuing Planning Obligations in England*, CLG, May 2006.

Box 1: The current system of planning obligations

Planning obligations are typically undertakings by developers or agreements negotiated between a local planning authority and a developer in the context of granting planning consent. These are underpinned legally by section 106 of the Town and Country Planning Act 1990, and are therefore also known as section 106 agreements. Government policy is that, in the context of planning consent, planning obligations should be used to make development acceptable in planning terms. This could be by securing contributions towards the provision of infrastructure and facilities required by local and national planning policies or by prescribing the nature of the development in some way, for example, by restricting the use of the land.

Planning obligations are sought for a wide range of purposes, including open space provision, transport and travel plans, and educational and community facilities. However, the main driver for the use of planning obligations in recent years has been to secure affordable housing contributions, largely on-site in line with Government policy. This is reflected in the scale of affordable housing contributions, which constitute around half of the total value of planning obligations secured in England.

There has been some criticism of planning obligations for delaying the planning process and for reducing its transparency, certainty and accountability. Government has sought to address these issues through policies and guidance encouraging the publication of local planning authority policies for planning obligations, providing a model agreement for planning obligations, and promoting the use of standard charges and formulae to calculate developer contributions.

The Government's current policy on planning obligations is set out in *Circular 5/05: Planning Obligations, CLG*, July 2005.

21. It is widely accepted that these objectives can be achieved through a system of standard charges, based on a simple formula which relates the size of the contribution to some characteristic of the development making the contribution.

22. Some local planning authorities have already recognised this and have introduced simple standard charges of this kind using the existing legislative base (see Box 2 overleaf).

Box 2: Examples of existing standard charging schemes

Horley (Reigate and Banstead Borough Council)
A per-dwelling charge on all development within an urban extension of 2,600 units. The charge is set out in a Supplementary Planning Document (SPD), which states the infrastructure requirements for new developments in Horley based upon consultation with the county council and other service providers. The SPD lists the infrastructure that is required, gives a justification for the basis upon which it is being sought and explains how much developers will be expected to contribute towards the different categories of infrastructure. Contributions are sought for transport, education, fire and rescue, social services and community facilities. Obligations are secured through a model framework agreement, which addresses the issue of phased payments and the triggers for payment.

City of London
A standard charging mechanism which uses standard formulae to calculate the level of contribution it seeks from developers for a variety of infrastructure requirements.

A series of identified areas, accompanied by specific plans, have been developed to assess where obligations will be required. Charges are on a residential unit and floor space basis. Differing thresholds apply depending on the type of development for which an obligation is sought. Contributions are sought for, amongst other things, education, CCTV, parking, health, and open space, as well as for the monitoring and enforcement of the scheme. Payment is usually required before the commencement of development although in some circumstances payments can be phased.

Warrington Borough Council
A standard charging mechanism which seeks contributions on a per dwelling basis for residential development and square metre gross floor space for commercial development. The SPD indicates the type of development that should pay, the threshold (some obligations are only required for development of a certain size) and the amount sought. Examples of contributions sought include education provision and health care facilities, public and community transport, cycling and pedestrian facilities, highway improvements, travel plans, amenity open space, sports facilities, and affordable housing.

Box 2: Examples of existing standard charging schemes *(continued)*

Some obligations are calculated through the use of standard formulae, with the remainder negotiated on a case by case basis. Where the cumulative effects of development are identified, the council may pool contributions.

Source: British Property Federation, Home Builders Federation, Major Developers Group and London First, submission to Government, December 2007.

23. The Government itself has also consulted on similar approaches twice in the past.[7] The CIL will build on existing practice, and knowledge developed from previous consultations, to deliver a standardised charging system which is fair, more broadly based and which provides more certainty for developers as to what contribution will be required.

24. Estimates as to how much the CIL will raise depend very heavily on the number of planning authorities who choose to take it up and the levels at which charges are set in each area. However, the Government believes that it has the potential to raise hundreds of millions of pounds of extra funding for infrastructure.

The Planning Bill

25. The Planning Bill now before Parliament provides the legislative framework for the CIL.

26. The clauses in the Bill allow for the creation of Regulations, which will be subject to formal public consultation (see paragraph 83) and which will set out the detail of the new regime and how the CIL will work in practice. This approach provides flexibility for the future. Planning obligations practice has evolved significantly over time, and it is to be expected that CIL will also evolve as charging authorities and developers become more familiar with the new approach. The framework of enabling powers in this Bill will allow the Regulations to respond to changing circumstances and changing practice.

27. The legislation also provides an opportunity to put in place important new safeguards for those paying and collecting CIL which are not available under the existing legislative framework for negotiated agreements. These

[7] *Reforming Planning Obligations: A Consultation Paper*, DTLR, 2001; and *Contributing To Sustainable Communities: A New Approach To Planning Obligations*, ODPM, 2003.

include, for example, a power for regulations to prescribe the procedure to be followed in setting the charge and a requirement to report on how the money raised is spent.

28. Since their publication, these clauses have been welcomed by stakeholders. Box 3 summarises stakeholder reactions.

Box 3: Stakeholder reactions

The British Property Federation (BPF) has stated that the property industry "broadly supports" the CIL clauses and has welcomed the introduction of CIL as a "sensible mechanism by which developers can make a contribution towards the infrastructure requirements of a local area". This is echoed by the Royal Institution of Chartered Surveyors (RICS), which has said that it "supports Government's move towards a Community Infrastructure Levy" and also by the Royal Town Planning Institute (RTPI), which has stated that "such a levy will provide a means of securing local infrastructure, based on an understanding of local infrastructure need developed in partnership between local planning authorities, development, infrastructure providers and local communities themselves."

The approach taken to legislating for the CIL has also been positively received, with the BPF and the Home Builders Federation (HBF) jointly announcing that they "welcome the fact that the CIL clauses of the Bill are enabling clauses. This will provide the necessary flexibility to implement the levy through regulations and guidance as its full details are developed."

The Confederation of British Industry has identified the benefit of "greater certainty for businesses" offered by the CIL, while the Local Government Association has stated that the CIL will make it possible for local authorities to "build on the successful experience of Section 106 and innovative approaches like the Milton Keynes tariff/roof tax."

Whilst there is broad support for CIL, we are working closely with stakeholders to work through any concerns that they may have and ensure that the Levy is deliverable (see paragraphs 79 to 83).

Sources: BPF: letter to MPs for second reading of Planning Bill, 10 December 2007; BPF press release, 28 November 2007. RICS: Parliamentary briefing, 10 December 2007. RTPI: *Planning Resource*, 27 November 2007. HBF / BPF: Joint Memorandum to the Planning Bill Committee, 7 January 2008. CBI: Briefing note to MPs for second reading of Planning Bill, 10 December 2007; LGA: Response to Planning Bill, 27 November 2007.

Application of the Bill to Wales

29. The Bill clauses on CIL include Wales. They enable the Secretary of State to empower local planning authorities in Wales, and the Welsh Ministers, to set a CIL. The planning system in Wales has some differences from the system in England, and the Government is holding discussions with Welsh Ministers on arrangements for CIL in Wales.

How the charging authority will set the CIL

30. Authorities seeking to charge CIL will need to undertake two main steps: identifying what infrastructure is needed and how much it will cost (paragraph 31); and working out what contribution each development should make to that cost (paragraph 32). Robust arrangements are needed for independent testing of CIL proposals with developers, infrastructure providers and the public in order to ensure that they satisfactorily support growth and are deliverable. That is why be believe the infrastructure planning underpinning CIL needs to be embedded in the development plan system.

31. Local authorities will need to assess and cost the infrastructure that is needed to support the development of their area. In drawing up proposals for infrastructure to be funded from the CIL, the Government is minded to propose that the CIL charging authority should, as part of the development plan process:

- have regard to infrastructure plans and the Regional Economic Strategy (in England) for the area;
- only include items of infrastructure that are likely to enable, facilitate or mitigate the impact of development in the area;
- have regard to the likely yield from the CIL given anticipated development and likely development viability;
- only include items that have a reasonable prospect of happening within the period covered by the development plan;
- have regard to the level of funding likely to be available from other national and regional funding sources – the expectation being that the CIL will be additional and, particularly for larger pieces of infrastructure, in many cases will only provide part of the funding required;
- prioritise those pieces of infrastructure likely to make the biggest contribution to enabling development to take place in a sustainable way.

32. The authority should also produce a draft charging schedule setting out the rate and/or formula determining how the levy might be calculated in their area:

- The process of setting charges should ideally also be embedded within the development plan process. However, the process needs to be flexible enough to react quickly to changing market conditions and needs to inlcude proper expert testing of the charging schedule. Accordingly, the Government is considering with key stakeholders how the necessary rigour and flexibility can be achieved.
- Developers applying for planning permission will be able to consult the published schedule and establish how much they will have to pay.
- There might be a case for allowing charges to vary within charging authorities to reflect specific local conditions, and this is something Government wishes to explore further in consultation with stakeholders.

CIL as a funding source for infrastructure

33. The Bill indicates that the purpose of the CIL is to contribute to the costs of the infrastructure needed to support the development of an area. The Government believes that CIL should not be used for general local authority expenditure, nor to remedy pre-existing deficiencies in infrastructure provision, unless these have been, or will in time be, aggravated by new development.

34. This does not mean that CIL must be spent on entirely new infrastructure. It could equally be used to facilitate better use of existing infrastructure to increase capacity. So, for example, where development necessitates the provision of additional sports facilities, CIL could be used to pay for the refurbishment of an existing community centre to provide such facilities. But it would not be acceptable to spend CIL on such a refurbishment where the development circumstances of the local area did not justify this.

35. The Bill provides that the Regulations may set out what is meant by infrastructure. The Government will seek to ensure that the things usually thought of as infrastructure – such as transport and flood defences – are covered by the definition.

36. But local government in general, and the planning system in particular, is charged with the delivery of sustainable development in the widest sense, and therefore with ensuring that the very things that make the quality of life good are provided for (or are not lost or weakened but are maintained or improved) when an existing community grows. This means adequate local facilities to serve families such as schools, parks, health centres, and flood defences to protect development from the impact of climate change.

37. The Government will therefore propose a wide definition for infrastructure which encompasses what might be considered social and environmental infrastructure, such as schools and parks.

38. The Government's preference is that negotiated planning obligations should continue to enable affordable housing to be delivered on-site, in support of the policy of mixed communities. However, it is important to ensure that there is no reduction in affordable housing contributions as a consequence of the introduction of CIL. The National Housing Federation has expressed some concern that this might occur if CIL is not set at a sensitive level. The Government is committed to protecting existing levels of private sector contributions towards affordable housing. So, while we do not initially intend to include affordable housing within the scope of what may be funded from CIL, affordable housing will be included within the definition of infrastructure in the Bill so that affordable housing could be included as part of the CIL if evidence later shows that this is necessary.

39. The CIL should be 'plan led'. This means that it should support the delivery of (for example) the homes and jobs envisaged in an authority's development plan. CIL spending will need to be underpinned by a costed list of infrastructure projects that are needed to support development. The Bill allows Regulations to set out the procedure which should be followed in preparing such a list, which may include consultation with those affected, including the infrastructure providers themselves.

40. This approach is consistent with draft Planning Policy Statement 12: Local Development Frameworks (applicable in England). Draft PPS12 stresses the importance of infrastructure planning to underpin the preparation of the core strategy of the Local Development Framework, and the need for the infrastructure planning process to identify infrastructure needs and costs, funding sources, and who will be responsible for delivery (see Box 4).

Box 4: Extract from draft PPS 12 on infrastructure planning

"4.8 The core strategy should be supported by evidence of what physical and social infrastructure is needed to enable the amount of development proposed for the area , taking account of its type and distribution. This evidence should cover who will provide the infrastructure and when it will be provided. The core strategy should draw on and in parallel influence any strategies and investment plans of the local authority and other organisations.

4.9 Good infrastructure planning considers the infrastructure required to support development, costs, sources of funding, timescales for delivery and gaps in funding. This allows for the identified infrastructure to be prioritised in discussions with key local partners. This has been a major theme highlighted and considered via HM Treasury's CSR07 Policy Review on Supporting Housing Growth. The infrastructure planning process should identify, as far as possible:

- Infrastructure needs and costs
- Phasing of development
- Funding sources
- Responsibilities for delivery.

4.10 The need for infrastructure to support housing growth and the associated need for an infrastructure delivery planning process has been highlighted further in the Government's recent Housing Green Paper. The outcome of the infrastructure planning process should inform the core strategy and should be part of a robust evidence base. It will greatly assist the overall planning process for all participants if the agencies responsible for infrastructure delivery and the local authority producing the core strategy were to align their planning processes. However the government recognises that the budgeting processes of different agencies may mean that less information may be available when the core strategy is being prepared than would be ideal. It is important therefore that the core strategy makes proper provision for such uncertainty and does not place undue reliance on critical elements of infrastructure whose funding is unknown. The test should be whether there is a reasonable prospect of provision. Contingency planning – showing how the objectives will be achieved under different scenarios – may be necessary in circumstances where provision is uncertain.

Box 4: Extract from draft PPS 12 on infrastructure planning *(continued)*

4.11 Infrastructure planning for the core strategy should also include the specific infrastructure requirements of any strategic sites which are allocated in it."

Streamlining Local Development Frameworks: Consultation, CLG, 2007.

41. The 2007 Comprehensive Spending Review included a review entitled Supporting Housing Growth. It found that the existing system of negotiated planning obligations can struggle to contribute effectively to large infrastructure requirements. There are often 'free rider' problems whereby (for example) either the first developer in an area or the last developer end up contributing disproportionately to the cost of the infrastructure required in that area, while others make a low contribution or no contribution at all.

42. Because standard charging approaches such as the CIL spread the burden more fairly and evenly, and result in a more predictable flow of income, they are likely to be better at dealing with this difficulty.

43. Regulations could provide for CIL charging authorities with further flexibilities likely to be of benefit in these circumstances. These might include the option of attributing CIL to expenditure which has already been incurred, for example where infrastructure has been funded in advance of future CIL receipts (and this would always be subject to the safeguard described above that CIL may only be spent on the infrastructure requirement generated by development), or the option of reserving CIL receipts for expenditure that may be incurred in the future. The Regulations may also make provision for the giving of loans, guarantees and indemnities, and this may enable charging authorities to procure infrastructure in a more timely and certain way from infrastructure providers.

44. Some regions and local authorities are also exploring different ways of securing funding to support the timely delivery of needed infrastructure, and then recoup these costs through anticipated sources of private or public funding that become available at a later date. Such levers could also be useful for 'pump priming' money into infrastructure projects before receipts from CIL come on stream and help to prevent delays in the delivery of the infrastructure required to unlock planned growth.

45. Box 5 below sets out mechanisms that regions and local authorities are developing, or have used, to forward fund the delivery of infrastructure schemes.

Box 5: Mechanisms for forward funding infrastructure

South West RDA (SWRDA) Regional Infrastructure Fund (RIF).
The proposed RIF is a mechanism through which the SWRDA can help ensure the timely delivery of major infrastructure projects, in situations where the anticipated private funding (developer contributions) will not be fully available at the time when the infrastructure is needed. The RIF can be used to support more sustainable growth or to unlock growth. In effect, the RIF can forward-fund the private sector developer contributions required to particular pieces of infrastructure, which will then be recouped from forecast private sector developer contributions (using s106 and potentially the CIL). SWRDA hope the RIF will take effect from 1 April 2008.

English Partnerships
English Partnerships (EP) has worked with local authorities, and other public bodies, to help to unlock housing growth by forward funding vital infrastructure. In West Bedford, for example, public sector agencies led by EP collaborated to underwrite the cost of a by-pass that released land for the development of 2, 250 new homes. The cost of the by-pass will be recovered through the resulting uplift in land values. In Ashford, EP is providing early finance for the Highways Agency to deliver a new junction to increase capacity at Junction 10 of the M20 and thereby unlock approximately 5000 new homes. The costs will be recovered through the local authority's Strategic Tariff.

46. These powers will of course need to be exercised in a way that ensures value for money to all of the funding parties. But they do offer exciting possibilities to ensure timely, efficient and effective infrastructure delivery.

47. The existing system of planning obligations does not meet all of the infrastructure costs of development. While CIL will make a significant contribution to infrastructure provision, it is likely to remain the case that CIL on its own will not be able to meet the entire cost of a major infrastructure project. Core public funding will continue to bear the main burden. As discussed above infrastructure planning therefore needs to take account of all of the funding streams available to local communities.

48. There is a consensus that the spending of some national bodies, which form part of Central Government, is essential to unlocking development at a local level. The most usually cited examples are the Highways Agency and the Environment Agency. The spending of these agencies, and others, usually amounts to being a benefit to a local or sub-regional area in a particular part of the country, rather than being of national benefit. Accordingly, the Government believes that these bodies should be able to receive funding from CIL revenues. However a decision to allocate any such funding should form part of the wider process of infrastrucutre planning alongside other infrastructure requirements.

49. In addition to the requirement that CIL must be spent on infrastructure to support the development of an area, the Bill facilitates important safeguards in relation to how CIL is spent, helping to ensure accountability and transparency. It enables Regulations to specify that any body which has received CIL (not just the authority that charged it) should monitor the use which either has been or will be made of it, account separately for CIL receipts, and report on how CIL was collected or spent. It also enables Regulations to specify what should happen when an infrastructure project which was intended to benefit from CIL no longer requires to be funded – which might occur, for example, if circumstances have changed since the infrastructure list was originally drawn up.

50. The Bill also allows Regulations to provide for a reserve power of direction for the Secretary of State in relation to the spending of CIL. This is intended as a safeguard, to be used in exceptional cases, where the spending proposed for CIL by a charging authority does not meet the purposes envisaged by the Government for CIL. The Government expects that this power would be used only as a last resort, and that it might be subject to a procedure which the Secretary of State would be required to follow before exercising it – including, for example, consultation with the charging authorities, infrastructure providers or local communities affected by it.

Sub-regional infrastructure

51. Some of the infrastructure needed to support the development of an area is likely to span more than one local authority area (this is referred to here as 'sub-regional infrastructure'). Examples might include hospitals, larger transport projects, or waste facilities. Sub-regional infrastructure is often larger infrastructure to which a number of authorities, and developers, need to contribute in order to make it affordable.

52. Negotiated planning obligations can struggle to deliver an adequate private sector contribution to such infrastructure, both in terms of quantum and timing of payments. This is partly because of the link between the development and the infrastructure being provided which a combination of law and Government policy require to be a feature of negotiated planning obligations. This link can be more difficult to demonstrate in relation to sub-regional infrastructure, because the infrastructure serves a wide geographical area and the benefit which any one development derives from that infrastructure may be small. Even if the cumulative impact of all the development in an area plainly necessitates such infrastructure, this may not be enough of a justification to secure a contribution towards its cost from any individual development.

53. But sub-regional infrastructure can often be the most critical type of infrastructure in terms of unlocking significant housing or economic development, and it is therefore important that the CIL is able to contribute to it.

54. Regulations could contain a number of powers aimed at ensuring that CIL can be an effective contributor towards sub-regional infrastructure. The Government will be seeking views on how best to ensure that CIL could be used to overcome difficulties which may be experienced in devoting developer contributions to sub-regional infrastructure.

Setting charges appropriately

55. Existing standard charging regimes use a variety of different bases for determining the contribution. These include floor and site area; number of dwellings; or number of bedrooms. Some regimes set different rates for different areas. Regulations will need to set out what bases could be used for the CIL. On the one hand, there may be benefit in having only a limited range of options to avoid excessive complexity, but on the other, local planning authorities will need sufficient flexibility to tailor their charging regime to suit their local area.

56. Stakeholders have been at pains to emphasise that standard charges of this type need to reflect the viability of development in the local area. The Government agrees if development is not delivered because the CIL is set at unaffordable levels, then the CIL will not be meeting its objective of helping to unlock development.

57. The Bill provides that the regulations will include provisions for determining the amount of CIL to pay. In drawing up its charging schedule, the charging authority may, amongst other things, make reference to the likely increase in value arising from the grant of planning permission in its area.

58. The viability of the CIL will depend ultimately on its impact on increases in land value arising from development. The uplift in land value likely to arise from gaining planning permission will be a significant component of that value increase. However, should the CIL liability grow too large relative to the uplift in land value which is effectively funding it, land will not come forward for development.

59. Some commentators, particularly from the commercial development sector, have argued that land value uplift arising from the grant of planning permissions in an area may not be the right indicator to which charging authorities should have regard in setting CIL levels when they prepare their charging schedule. The Goverment's view is that the increase in value arising from commercial development will be reflected in a land sale price eventually. For example, a higher rental stream arising from the redevelopment of commercial property is likely to be reflected in a higher capital value at the point of eventual sale. However, commercial developers have argued that it may not be necessary or desirable to carry out an assessment of land value change in order to decide what level of CIL is affordable, and that there could be other more immediate proxies. The Government is in discussion with the industry to establish whether other measures or proxies might be appropriate.

60. In drawing up its charging schedule the charging authority will also need to take into account the wider range of development costs placed on developers by that authority. This assessment should include the level of affordable housing contributions which will be required from developments, in order to ensure that a CIL liability does not reduce the amount of affordable housing delivered through negotiated agreements (see also paragraph 38).

61. The charging schedule will need to be kept under review and adjusted as circumstances change – for example as market conditions change, causing changes in land values and development priorities. A certain level of automatic responsiveness could be allowed through regulations, for example allowing charges to move in line with a measure of inflation such as a construction prices index. However regulations will also need to set out procedures to amend schedules, and in a way that ensures full community and stakeholder participation.

62. Where there is a danger that the level of CIL which is proposed by a charging authority does not meet the Government's objectives, the Bill allows for regulations to provide a reserve power for the Secretary of State to cap the amount of CIL which an authority may raise. As with the power to direct the spending of CIL , the Government envisages that this power would be used only as a last resort, and that it might be subject to a procedure which the Secretary of State would be required to follow before exercising it.

The future of planning obligations

63. Section 106 of the Town and Country Planning Act 1990 (see Box 1) will be retained as the legal underpinning for negotiated agreements between developers and local planning authorities. For those authorities who choose not to introduce a CIL to fund local infrastructure, planning obligations will continue to provide a means of securing developer contributions (see also section on transitional arrangements, below).

64. Where a CIL is implemented, planning obligations under section 106 will complement CIL. But the Government proposes, subject to consultation, that they should focus on three areas. Firstly, planning obligations may be the only suitable tool to cover certain non-financial, technical or operational matters.

65. Secondly, the Government proposes that developers should continue to negotiate directly with the local planning authority to deal with the site-specific impacts that their development will have on the immediate area and without the mitigation of which the development ought not to be given

planning permission. This might include, for example, an access road to the development, on-site archaeology or the protection of endangered species found on the site.

66. Thirdly, to ensure that there is sufficient affordable housing to achieve genuinely mixed communities, the Government believes that affordable housing should wherever possible be provided on-site. Accordingly, it proposes that affordable housing should continue to be provided through negotiated planning obligations, as is currently the case.

67. The Government will seek views on whether a statutory boundary should be drawn between what is covered by CIL and what is covered by negotiation, and if so, where that boundary might be drawn. For example, developers could be protected from burdensome obligations by prohibiting authorities from seeking contributions towards the same infrastructure project through both planning obligations and CIL. A further option might be not to prescribe a boundary at a national level, but instead to allow charging authorities to decide and articulate this for themselves.

68. The Government will continue to encourage local planning authorities to use planning conditions rather than planning obligations wherever possible.[8]

Paying CIL

69. The Government envisages that, as is often the case with planning obligations, CIL will be payable at the point of commencement of development.

70. The Government proposes that the amount of CIL to be paid will be determined either at, or by reference to, the point in time at which the planning permission first becomes fully effective. In practice, this is likely to mean that a CIL liability is unlikely to be finally determinable at outline stage.

71. Currently the Bill states that Regulations must ensure that liability for paying CIL is attached to the landowner at the point when CIL becomes payable. There may be difficulties associated with this (for example, the existence of unregistered land, the difficulty of enforcing against off-shore landowners, and the fact that developers may not own the land at the time that the permission becomes effective). Government is therefore proposing that developers could also be liable.

72. The Bill provides for the possibility that CIL may be paid by instalments.

[8] The reasons for preferring planning conditions over planning obligations are set out in paragraph 51of ODPM Circular 5/05: *Planning Obligations*

Consequences of failure to pay CIL

73. The Bill allows for Regulations to set out the enforcement action that may be taken when CIL has not been paid.

74. The Government is minded to propose that failure to pay CIL could result in a legal requirement to halt development. The Government is also considering a proposal to ensure that when a CIL liability is fixed, that liability may be registered as a land charge so that if development commences and CIL is not paid, subsequent owners of the land will be aware that the liability has not been discharged and that further enforcement action might be taken against them.

75. The Bill also includes a power to create a criminal offence. The Government believes that in the interests of fairness for all those paying CIL, certain actions or omissions in relation to CIL might also warrant criminal prosecution. Criminal offences could, for example, apply in circumstances where a person has deliberately acted (perhaps by supplying misleading information), or has deliberately failed to act, with the intention of evading a CIL liability, or obstructing a public authority in relation to CIL.

Exemptions and thresholds

76. The Government believes that CIL should be levied on most types of development, including both residential and commercial development. This will minimise distortions and ensure that all development which has an impact on infrastructure contributes towards the cost of that infrastructure.

77. The Government will take a criteria-based approach towards deciding whether there should be any exemptions from CIL.

78. The Government has already announced, however, that in order to reduce administrative complexity, there will be a de minimis threshold for CIL. The Government does not intend that CIL liability will arise in relation to householder development by homeowners. Subject to further consultation, some permitted development (development deemed to have been granted permission by the General Permitted Development Order), might also not be liable for CIL.

Working with stakeholders

79. The Government has consulted extensively on the potential of standard charges to secure developer contributions, including two formal consultations in 2001-02 and 2003-04. In addition, the Government consulted informally with key stakeholders during the summer of 2007 in the context of a decision on whether or not to proceed with PGS at this time. The Government concludes from those consultations, and the reaction to the announcement that it has decided to proceed with the CIL, that there is now a solid understanding of, and very broad consensus in favour of, the standard charging approach which the Government is now adopting.

80. The Government welcomes the constructive way in which stakeholders have participated in the development of the Community Infrastructure Levy. It will continue that dialogue during the passage of the Bill and beyond.

81. Communities and Local Government is now working with the main developer and local government bodies to work out the best practical arrangements for the CIL. Communities and Local Government is establishing a Practitioners Group of individuals experienced in developing or implementing charging policies drawn from across the fields of local government, the development industry and members of relevant expert bodies such as the Royal Institute of Chartered Surveyors.

82. The Government wants to build on the innovative arrangements that some authorities have introduced, learning from their experience. Working in partnership with the Local Government Association, we have invited a small number of local planning authorities to be the subject of case studies, both in terms of understanding their existing policies on developer contributions but also exploring with them what the Government's proposals for the CIL would mean for them.

83. The Government will also be talking to local planning authorities and others about what help they need to implement the new regime effectively and fairly, and will consult stakeholders as the Regulations are developed. Subject to Parliament's decisions on the primary legislation, Communities and Local Government aims to formally consult on the draft Regulations in Autumn 2008, with a view to finalising them in Spring 2009. Regulations will need to be explicitly approved by the House of Commons before becoming law.

84. Once CIL is implemented, the Government will keep its effectiveness under review to ensure that the Government's objectives of significant additional funding for infrastructure is being met.

What local planning authorities should do in the meantime, and transitional arrangements

85. Many local planning authorities either have already developed standard charges or are considering them. The Government encourages them to continue this work, reflecting current law and policy. They should however bear in mind the new policy direction now being set out, so that they are ready to take advantage of the new power to charge CIL.

86. A first and fundamental step is to ensure that there is a good evidence base both on infrastructure needs and priorities, and on the changes in land value that occur when planning permissions are granted in an area. The latter may vary substantially from site to site and from one type of development to another. Charging authorities will need to have a good understanding of those variations if they are to produce charging regimes which promote rather than prevent development. Collecting this evidence base now will put authorities in a good position to move quickly to consultation on a charging schedule once the detail of the new regime is settled. It builds on existing responsibilities for infrastructure planning.

87. Local planning authorities will wish to note that the Regulations will empower, rather than require, them to introduce a CIL to fund local infrastructure. However, the Government will encourage local planning authorities to impose any standard charges using CIL rather than through planning obligations policies, because of the clearer basis it provides for securing contributions from a wider range of developments and the additional benefits and safeguards it allows for.

88. For those authorities who choose not to introduce a CIL to fund local infrastructure, the existing legislative framework of planning obligations (see Box 1 above) will continue to provide an alternative means of securing developer contributions, although the Government will need to consider whether Regulations should change how planning obligations may be used in order to enable them to function effectively alongside CIL.

89. The Bill enables the Regulations to specify transitional arrangements. Consultation on the draft Regulations will give local planning authorities and developers an opportunity to comment on any transitional arrangements that are proposed.